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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,144	07/08/2003	Sandro Panaioli	F3312(C)	2072

201 7590 01/12/2005

UNILEVER INTELLECTUAL PROPERTY GROUP
700 SYLVAN AVENUE,
BLDG C2 SOUTH
ENGLEWOOD CLIFFS, NJ 07632-3100

EXAMINER

DONOVAN, MAUREEN C

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/616,144

Applicant(s)

PANAIOLI ET AL.

Examiner

Maureen C Donovan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. This action is responsive to communications: Amendment A filed 10/7/2004.
2. Claims 1-6 are pending in the case.

Information Disclosure Statement

1. The information disclosure statement filed 05 October 2004 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein regarding FR 1515083A has not been considered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 6 recites a packaged "frozen food" and further recites that this food comprises a plurality of the food as recited in Claim 1. Claim 6 is disjointed from claim 1 since it is unclear the scope that claim 6 encompasses. It is unclear what is intended to be encompassed by the recitation of "frozen food" in claim 6. Is this "frozen food" different from the food product claimed in claim 1, is it multiple units of claim 1 individually packaged and then packaged again in a larger package, or rather is it one package containing multiple units of claim 1? The scope of claim 6 is therefore indefinite.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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1. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over SirRedhawk, Google Usenet discussion forum post in view of "Freezing Lasagna", Google Usenet discussion forum post.

The rejection over SirRedhawk is incorporated as cited against claims 1 and 2 in the previous Office action mailed 02 June 2004.

SirRedhawk disclosed all the features of the instantly claimed invention except for that the product is frozen.

"Freezing Lasagna" taught freezing a lasagna product for consumption at a later time period (see Page 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to have frozen the lasagna of SirRedhawk as taught by "Freezing Lasagna" since both are directed to methods of preparing and serving lasagna and since freezing the lasagna would allow the lasagna to be conveniently prepared before it is served while keeping it fresh and preserved during storage.

Applicant's arguments, filed 07 October 2004, with respect to the rejection(s) of claim(s) 1-2 under 35 U.S.C. 102(b) over SirRedhawk regarding SirRedhawk not teaching a frozen pasta product have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of SirRedhawk in view of "Freezing Lasagna".

Applicant's arguments filed 07 October 2004 have been fully considered but they are not persuasive. At page 6 of the response, applicant states that SirRedhawk does not contemplate a rectangular pasta sheet sealed along two opposing surfaces (emphasis added) and applicant further submits that SirRedhawk "probably" meant to indicate trapping the fillings within the baking dish and that SirRedhawk clearly does not disclose sealing opposing pasta surfaces. This is not deemed persuasive for the reasons of record. SirRedhawk discloses a pasta sheet that extends around all the layers of a layered pasta product and is folded over those layers and acts to seal in the fillings contained in the pasta product. The Office interprets the reference to disclose that the opposing sides of the pasta sheet are sealed together, since in order to successfully "seal in the fillings" as disclosed by SirRedhawk, the pasta sheet would have to be sealed along opposing surfaces in order to prevent the fillings from leaking out onto the top of the pasta

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product. The Office interprets the references disclosure of sealing in the fillings to mean not just seal the fillings within the baking dish, but within the pasta itself. In addition applicant's submission regarding what the reference "probably" meant is not deemed to be a persuasive argument since the reference could just as likely "probably not" mean that as well.

In addition, at page 7 of the response, applicant states that the subject matter of instant claim 1 would not have been obvious in view of SirRedhawk since the claimed subject matter regards small frozen lasagnas which maintain their integrity during re-heating wherein SirRedhawk is concerned with a traditional lasagna product. This is not deemed persuasive for the reasons of record. While SirRedhawk is directed to a traditional lasagna product, the claim language still encompasses a traditional lasagna product, further; applicant has not distinguished the claim language from the SirRedhawk reference.

2. Claims 3, 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over SirRedhawk in view of "Freezing Lasagna" as applied to claims 1-2 above, and further in view Nilsson, European Patent number 882 406.

SirRedhawk as modified by "Freezing Lasagna" disclosed all the features of the instantly claimed invention except for the specific type of sauce layers the pasta product would be comprised of or the weight of the product or a packaged frozen food comprising a plurality of pasta products.

Nilsson taught that the sauces used in lasagna are conventionally cheese-flavored sauces and vegetable and/or meat flavored sauces (see Column 1, lines 12-14). To use the sauce types taught by Nilsson in the food product of SirRedhawk would have been obvious to one of ordinary skill in the art at the time of the invention since both are directed to lasagna products, since Nilsson teaches that these sauces are conventionally utilized in making lasagna, and since utilizing different types of sauces in the lasagna of SirRedhawk would have been obvious to one of ordinary skill in the art in order to change the taste profile of the food product according to consumers tastes and to add variety to the types of lasagnas that could be produced.

Nilsson taught the unit weight of a segment of frozen layered pasta product should be from 20 to 80 grams. Nilsson further taught that keeping the segment weight within this range is

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important for proper reheating of the frozen segment (see Column 3, lines 20-22). Nilsson taught that the method with which the lasagna is prepared is not essential, and that the teachings could be applied to any pasta product that was comprised of fillings arranged between layers of pasta (see Column 4, lines 1-5). It would have been obvious to one of ordinary skill in the art at the time of the invention to prepare the lasagna of SirRedhawk as modified by "Freezing Lasagna" to a weight within the range taught by Nilsson in order to provide a lasagna product with a convenient reheat time. In addition attention it would have been obvious to one of ordinary skill in the art to scale the recipe of SirRedhawk as modified by "Freezing Lasagna" down, as it is a conventional practice in the art to scale up or down food recipes depending on the consumers preference or serving requirements and since mere scaling down of prior art capable of being scaled down, would not establish patentability in a claim to an old product so scaled.

Nilson taught freezing lasagna and packaging multiple lasagnas together in one package, and that the number of segments depends on the amount that is needed for one lasagna portion depending on the consumers preference(see Column 5, lines 39-44). And again it is noted that Nilsson taught that the method with which the lasagna is prepared is not essential, and that the teachings could be applied to any pasta product that was comprised of fillings arranged between layers of pasta (see Column 4, lines 1-5). It therefore would have been obvious to one of ordinary skill in the art at the time of the invention to have packaged the frozen lasagna of SirRedhawk as modified by "Freezing Lasagna" with other lasagna segments according to the amount of lasagna that is required to be made in one preparation

Applicant's arguments, filed 07 October 2004, with respect to the rejection of claim 6 under 35 U.S.C. 102(b) over Nilsson have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of SirRedhawk in view of "Freezing Lasagna" and Nilsson.

Applicant's arguments filed 07 October 2004 have been fully considered but they are not persuasive. Applicant's arguments concerning the rejections of Claims 3 and 5 under 35 U.S.C. 103(a) over the combination of SirRedhawk and Nilsson reflect the arguments made against the rejection of Claims 1 and 2 over SirRedhawk, therefore as the rejection of Claims 1 and 2 over

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SirRedhawk were addressed and maintained above, so is the rejection of Claims 3 and 5 under 35 U.S.C. 103(a).

3. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over SirRedhawk in view of "Freezing Lasagna" and Nilsson as applied to claims 3-5 above, and further in view of Mattson, US Patent number 5 077 066.

SirRedhawk as modified by "Freezing Lasagna" and Nilsson disclosed all the features of the instantly claimed invention except for the ratio of pasta to sauce in the product.

Mattson teaches a frozen food product wherein the proportion of pasta to the remaining ingredients in the product is in the range from 5:95 to about 90:5 wt/wt (see Column 6, line 27). The remaining ingredients as taught by Mattson are sauce concentrate, meat and vegetables, which is defined by applicant in Claim 3, as sauce. The ratio claimed by applicant is within the range taught by Mattson. Applicant discloses in the specification that the ratio of pasta to sauce is important in order to "provide favorable textural contrasts" (see Specification, page 3, line 16-19). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use a ratio in the range taught by Mattson in order to "assure good mouth feel" (see Column 2, lines 56-58) in the pasta product of SirRedhawk as modified by "Freezing Lasagna" and Nilsson.

Applicant's arguments filed 07 October 2004 have been fully considered but they are not persuasive. Applicant's arguments concerning the rejections of Claims 4 under 35 U.S.C. 103(a) over the combination of SirRedhawk and Mattson reflect the arguments made against the rejection of Claims 1 and 2 over SirRedhawk, therefore as the rejection of Claims 1 and 2 over SirRedhawk were addressed and maintained above, so is the rejection of Claim 4 under 35 U.S.C. 103(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maureen C Donovan whose telephone number is (571) 272-2739. The examiner can normally be reached on 8:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MCD



KEITH HENDRICKS
PRIMARY EXAMINER